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| EXAMINER |
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MEINECKE DIAZ, SUSANNA M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/070,358 | KAWAHARA ET AL. | |
| | Examiner | Art Unit | |
| | Susanna M. Diaz | 3692 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 November 2007 and 12 March 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-14,16-19 and 21-27 is/are rejected.
- 7) Claim(s) 4,15 and 20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This non-final Office action is responsive to Applicant's responses filed November 13, 2007 and March 12, 2008.

Claims 1-27 are presented for examination.

Response to Arguments

2. Applicant's arguments filed November 13, 2007 and March 12, 2008 have been fully considered but they are not persuasive.

Applicant's claim amendments have overcome the previous rejections under § 101, except for that of claim 19. Also, in light of recent case law, a new rejection is applied to claims 1-8.

Regarding the § 101 rejection of claim 19, Applicant argues that claims 18-22 "are directed to a computer program product containing a computer program to be executed in a computer." (Page 20 of Applicant's arguments filed November 13, 2007) However, claim 19 does not specify that the computer-readable program product comprises computer-executable instructions for performing the recited functionality; therefore, claim 19 is not written in a proper article of manufacture claim format. Support for Examiner's position (including relevant case law) is found in MPEP § 2106.

Applicant argues that the claim amendments have overcome the rejections under 35 U.S.C. § 112, 2nd paragraph. The rejections of claims 4-6 are withdrawn; however, the rejections of 7, 19, and 22-27 under § 112, 2nd paragraph are maintained. The rejection of claim 19 is maintained for the reasons discussed above (in reference to

the § 101 rejection). Applicant does request that the Examiner provide a citation to case law in support of the Examiner's assertion regarding apparatus claims (page 22 of Applicant's arguments filed November 13, 2007). The Examiner refers Applicant to MPEP § 2114. This section explains the following:

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)... A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)

Regarding the rejection under § 103(a), Applicant requests that the Examiner cite case law to support her position that the contractual terms surrounding a spot transaction are outside of the scope of the claimed invention and therefore do not patentably distinguish the claimed invention from the prior art (page 23 of Applicant's arguments filed November 13, 2007). As discussed above, MPEP § 2114 explains that apparatus claims are defined by their structural elements and any corresponding functionality. The contractual nature of the spot transaction does not affect the recited

structural elements of the apparatus claims. For example, there is no structure that is specifically dedicated to processing contractual details of the spot transaction. Also, even if the apparatus claims were amended to incorporate a device for inputting contractual details, for example, such a recitation of the contractual details would likely amount to non-functional descriptive material (unless the data were utilized for further operations that were specifically dependent on the inputted type of data). If the differences between the recited non-functional descriptive material and the prior art are only found in the non-functional descriptive material and are not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106. Looking at the method and article of manufacture claims, the contractual details of the spot transaction do not specifically affect the recited functionality (e.g., setting a schedule of cargo transportation..., reading the data associated with said transportation..., arranging an insertion of cargo transportation...). As currently recited,

the claimed invention's approach to scheduling does not vary based on the contractual details of the spot transaction beyond the fact that the scheduling of a spot transaction is inserted into an existing schedule. Borders in combination with the various asserted statements of Official Notice (now submitted to be admitted prior art) address the metes and bounds of the manipulative steps of the method and article of manufacture claims. The fact that the spot transaction may be based on a temporary contract (as well as any other contractual details) effectively merits the same analysis as non-functional descriptive material (relevant case law has been cited above).

Applicant argues that the Examiner's interpretation of a "spot transaction" is not consistent with the specification. Applicant particularly refers to page 2, line 16 through page 3, line 10 of the specification (page 23 of Applicant's arguments filed November 13, 2007). Applicant provides no special definition with clearly defined metes and bounds for a "spot transaction."

Applicant argues that Borders does not disclose or suggest the features of the independent claims as a whole; however, Applicant is reminded that these claims are rejected under § 103(a). In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (including statements of Office Notice). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Also, Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since

Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice are now formally established on record as admitted prior art:

Official Notice is taken that it was old and well-known in the art of shipping at the time of Applicant's invention to define shipment contracts that are more temporary and ones that are more long-term (i.e., fixed for a predetermined term).

Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to transport liquefied natural gas in containers via a sea or on road.

Official Notice is taken that it was old and well-known in the art of shipping at the time of Applicant's invention to deliver a product sufficiently prior to when the product is expected to expire.

Claim Objections

3. Claim 1 is objected to because of the following informalities:

Claim 1, last line of the claim, delete "mens", insert – means –
Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 8-12 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Comiskey explains that mental processes *per se* are not statutory under § 101. Mental processes must be tied into some other category of statutory subject matter in order to be potentially patentable under § 101. *Comiskey* specifically states, "However, mental processes -- or processes of human thinking -- standing alone are not patentable even if they have practical application." (See *In re Comiskey*, 84 USPQ2d, at 1678) *Comiskey* continues with the rationale that "the patent statute does not allow patents on particular systems that depend for their operation on human intelligence alone, a field of endeavor that both the framers and Congress intended to be beyond the reach of patentable subject matter. Thus, it is established that the application of human intelligence to the solution of practical problems is not in and of itself patentable." (See *In re Comiskey*, 84 USPQ2d, at 1679) Claims 8-12 are directed toward a mental process that is totally reliant on the operation of human intelligence alone and the process recited in these claims is not tied to another statutory class nor does it transform underlying subject matter to a different state or thing; therefore, claims 8-12 do not fall into one of the statutory categories recognized as patentable under 35 U.S.C. § 101.

Claim 19 is written in an improper computer program product (i.e., article of manufacture) claim format, as discussed in the § 112, 2nd paragraph rejection. Consequently, this claim is interpreted as a computer program *per se*, which is non-statutory under § 101.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7, 16, 19, and 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear if claims 7 and 22-27 are meant to be independent or dependent claims. They each refer to another respective claim of a distinct preamble. For example, claim 7 is directed toward a system, but it appears to attempt to incorporate by reference the details of the transaction coordinating device from claim 1. It is not clear if all details are meant to be read in or just some. Claim 7 should either be clearly written as a dependent claim (making reference in the preamble to being directed toward a device as recited in claim 1) or it should be written out as an independent claim (expressly reciting all desired limitations of the transaction coordinating device). Similar issues arise with claims 22-27.

Regarding claim 16, there is no “information recording medium” recited in claim 13; therefore, it is not clear if claim 16 is dependent from claim 13.

Claim 19 recites a computer-readable program product; however, there are no computer-, machine-, or processor-executable instructions expressly stored on a

computer readable medium; therefore, the article of manufacture format of this claim is improper.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 5-9, 11-14, 16-19, and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borders et al. (US 2001/0047285) in view of Official Notice.

Borders discloses a transaction coordinating device for coordinating an insertion of a spot transaction based on a temporary contract being made without respect to a fixed transaction based on a contract of predetermined term, said spot transaction comprising a transaction based on a one-time sales contract or based on an intermittent supply contract which is completed in a few times, said fixed transaction comprising a long-term stable offtake contract of predetermined term in which transportation schedules can be confirmed at least about a year before (It should be noted that the contractual terms surrounding a spot transaction are outside of the scope of the claimed invention since the details of creating a temporary contract are not positively recited. Additionally, the fact that the spot transaction is based on a temporary contract does not affect any recited structure nor any manipulative steps of the claimed invention;

therefore, the contractual limitations associated with the spot transaction will not distinguish the claimed invention over the prior art. Similarly, it should be noted that the contractual terms surrounding a fixed transaction are outside of the scope of the claimed invention since the details of actively setting the transaction as a fixed transaction for a predetermined term are not positively recited. This feature of the invention does not affect any recited structure nor any manipulative steps of the claimed invention; therefore, the fact that the transaction is fixed and based on a contract of predetermined term will not distinguish the claimed invention over the prior art. Consequently, for purposes of examination, a “spot transaction” will be interpreted as a transaction that is in the process of being scheduled while a “fixed transaction” will be interpreted as a transaction that has already been scheduled), said transaction coordinating device comprising:

[Claim 1] means for arranging an insertion of a cargo transportation relating to said spot transaction into a predetermined schedule of a cargo transportation relating to said fixed transaction of predetermined term, said insertion being arranged by adjusting the predetermined schedule of said cargo transportation relating to said fixed transaction of predetermined term (¶¶ 57-58 – A new schedule request is attempted to be inserted into an existing delivery route); and

means for delivering sales data of the spot transaction to participants in the spot transaction and to the insertion arrangement means and delivering transportation adjusting data from the insertion arrangement means to the participants in the spot transaction (¶¶ 56-63);

[Claim 2] means for storing data associated with said transportation (Figs. 1, 3; ¶¶ 45-47), wherein

said insertion arrangement means arranges an insertion of said cargo transportation of said spot transaction based on data associated with said transportation transmitted from said transportation data storing means (Figs. 1, 3; ¶¶ 45-47, 57-64);

[Claim 3] means for storing data associated with said transportation (Figs. 1, 3; ¶¶ 45-47); wherein

said insertion arrangement means arranges an insertion of a cargo transportation of said spot transaction based on data associated with conditions of said spot transaction transmitted from said sales data delivering means and said transportation data storing means (¶¶ 56-63);

[Claim 7] a terminal of a participant of said spot transaction connected to said insertion arrangement means and said sales data delivering means via a communications circuit (¶¶ 40, 42, 56-63);

wherein said spot transaction is conducted between said terminal operated by a participant of said spot transaction and said insertion arrangement means and said sales data delivering means of said transaction coordinating device (¶¶ 40, 42, 56-63);

[Claim 23] a terminal of a participant of said spot transaction connected to said transaction coordinating device via a communications circuit, wherein said spot transaction is conducted between said terminal operated by a participant of said spot transaction and said transaction coordinating device (Fig. 1; ¶ 57);

[Claim 24] a terminal of a participant of said spot transaction connected to said transaction coordinating device via a communications circuit, wherein said spot transaction is conducted between said terminal operated by the participant of said spot transaction and said transaction coordinating device (Fig. 1; ¶ 57);

[Claim 25] a terminal of a participant of said spot transaction connected to said transaction coordinating device via a communications circuit, wherein said spot transaction is conducted between said terminal operated by the participant of said spot transaction and said transaction coordinating device (Fig. 1; ¶ 57);

[Claim 26] a terminal of a participant of said spot transaction connected to said transaction coordinating device via a communications circuit, wherein said spot transaction is conducted between said terminal operated by the participant of said spot transaction and said transaction coordinating device (Fig. 1; ¶ 57);

[Claim 27] a terminal of a participant of said spot transaction connected to said transaction coordinating device via a communications circuit, wherein said spot transaction is conducted between said terminal operated by the participant of said spot transaction and said transaction coordinating device (Fig. 1; ¶ 57).

Regarding claim 1, even if the fact that a spot transaction is based on a temporary contract being made without respect to a fixed transaction and the fixed transaction is based on a contract of predetermined term were granted patentable weight (beyond representing a transaction currently being scheduled versus already scheduled transactions), such details would be obvious in light of the prior art teachings.

While Borders does not expressly disclose the contractual details behind a spot versus a fixed transaction, Official Notice is taken that it was old and well-known in the art of shipping at the time of Applicant's invention to define shipment contracts that are more temporary and ones that are more long-term (i.e., fixed for a predetermined term) [now admitted prior art]. As explained above, the contractual details behind the spot and fixed transactions do not affect the claimed structural elements nor do they affect the manipulative steps of the claimed invention. Regardless of the contractual details behind the transactions, as claimed, the recited structure and functionality would remain the same; therefore, the application of the claimed scheduling method, system, and computer program product to any type of transaction would yield predictable results. For example, the claims merely schedule one transaction. There are no iterations to schedule recurring deliveries versus only one single delivery; therefore, a contract that might require repeat deliveries is treated no differently than a contract for a single delivery. Consequently, one of ordinary skill in the art at the time of Applicant's invention would have recognized that the application of Borders' shipment scheduling invention to various existing types of shipment contracts would have yielded predictable results because the operation of Borders' scheduling as well as the operation of establishing contractual terms are not altered by a combination of the two.

Regarding claim 5, Borders does not expressly disclose that a commodity involved in said transaction comprises liquefied natural gas and containers containing said liquefied natural gas transported on a sea or on a road are used in said transportation, and said cargo transportations are constrained by requirements of

transporting liquefied natural gas; however, claim 5 is directed toward a device (i.e., an apparatus). Apparatus claims are defined by the recited structure and corresponding functionality. The type of commodity and containers involved in the claimed invention does not alter the recited structure or manipulatively affect any recited functionality; therefore, the particular type of commodity and containers transported will not patentably distinguish the claimed invention over the prior art. Even the limitation that “said cargo transportations are constrained by requirements of transporting liquefied natural gas” does not clearly define how constraints associated with transporting liquefied natural gas as opposed to any other product would be different within the scope of the claimed invention. While the Examiner can envision that only certain modes of transportation might be used for transporting liquefied natural gas, these types of constraints are not made clear within the claim language, especially as they would pertain to liquefied natural gas versus any other transported product. Nevertheless, Official Notice is taken that it was old and well-known in the art at the time of Applicant’s invention to transport liquefied natural gas in containers via a sea or on road [now admitted prior art]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to adapt Borders to transport a commodity comprising liquefied natural gas in containers via a sea or on road wherein said cargo transportations are constrained by requirements of transporting liquefied natural gas in order to make Borders more adaptable to serving a wider range of shipping clientele, thereby improving its chances for profit. Furthermore, since the operation of the claimed invention as well as Borders’ disclosed invention are not unexpectedly altered

based on the particular type of commodity and containers transported and all results from the modified version of Borders would have been predictable by those of ordinary skill in the art at the time of Applicant's invention, the Examiner submits that the claimed invention is obvious in light of the cited prior art.

As per claim 6, Borders does not expressly perform the step of coordinating an insertion of a cargo transportation of said spot transaction based on at least a predetermined number of days of operation and an actually required minimum number of days of operation of said cases (e.g., containers), wherein said predetermined number of days of operation is greater than or equal to said actually required minimum number of days of operation; however, Official Notice is taken that it was old and well-known in the art of shipping at the time of Applicant's invention to deliver a product sufficiently prior to when the product is expected to expire [now admitted prior art]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Borders to perform the step of coordinating an insertion of a cargo transportation of said spot transaction based on at least a predetermined number of days of operation and an actually required minimum number of days of operation of said cases (e.g., containers), wherein said predetermined number of days of operation is greater than or equal to said actually required minimum number of days of operation in order to provide better customer service. Clients will have no use for expired products and, therefore, will be more likely to be satisfied if their requested shipments arrive while the shipped products are still viable for use.

[Claims 8, 9, 11-14, 16-19, 21, 22] Claims 8, 9, 11-14, 16-19, 21, and 22 recite limitations already addressed by the rejection of claims 1-3, 5-7 and 23-27 above; therefore, the same rejection applies.

Furthermore, as per claim 19, Borders discloses that the spot transaction is scheduled with respect to a schedule of one or more of single and plural cargo transportations (¶¶ 56-64).

Allowable Subject Matter

10. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 101 paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 4, 15, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692